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ACCEPTED
Legal *243-8-05*

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March 8, 2005

RECEIVED
2005 MAR -8 PM 2:45
SOUTH CAROLINA
PUBLIC SERVICE
COMMISSION

Mr. Charles Terreni
Chief Clerk of the Commission
Public Service Commission of South Carolina
Post Office Drawer 11649
Columbia, South Carolina 29211

Re: Petition to Establish Generic Docket to Consider Amendments to
Interconnection Agreements Resulting From Changes of Law
Docket No. 2004-316-C

Dear Mr. Terreni:

Yesterday, BellSouth Telecommunications, Inc. ("BellSouth") posted the Carrier Notification that is attached as Exhibit A on its website. As explained in more detail in the Notification, BellSouth will, for a short time, continue to receive, and will not reject, CLEC orders for "new adds" as they relate to the former UNEs identified by the Federal Communications Commission ("FCC") in its *Triennial Review Remand Order* ("TRRO"). BellSouth will continue to accept CLEC orders for these "new adds" until the earlier of (1) an order from an appropriate body, either a commission or a court, allowing BellSouth to reject these orders; or (2) April 17, 2005.

By doing this, BellSouth intends to allow the Public Service Commission of South Carolina ("the Commission") and other state commissions that have not had the opportunity to fully and carefully consider the requests of the CLECs and the responses of BellSouth, to do so in a measured way, rather than via various "emergency" proceedings requested by a number of CLECs. To be clear, BellSouth does not agree that any "emergency" exists. Since the courts and the FCC began eliminating BellSouth's obligation to provide certain items on an unbundled basis, BellSouth has been urging CLECs to negotiate agreements for the provision of those items on a commercial basis. On March 23, 2004, for example, BellSouth issued Carrier Notification SN91084043 (attached as Exhibit B to this letter) that states:

In light of the [D.C. Circuit's *USTA II*] Order, BellSouth is prepared to offer switching and DS0 loop/switching combinations (including what is currently known as UNE-P) at commercially reasonable and competitive rates. . . . Consistent with the direction provided by FCC Chairman Michael Powell, BellSouth invites your company to enter into good faith negotiations of a market-based commercial agreement aimed at benefiting the end user, establishing stability in the industry and allowing real competition to continue throughout the BellSouth region. Entering into such an agreement will effect an efficient transition from switching under your existing Interconnection Agreement to switching offered on a commercial basis.

In the year since this Notification was issued, more than 40 CLECs have entered into commercial agreements with BellSouth, proving that BellSouth has been (and, as explained below, continues to be) ready and willing to negotiate meaningful and reasonable commercial agreements with CLECs. The poor planning on the part of those CLECs who have ignored this invitation simply cannot be said to create an "emergency" on the part of the Commission or BellSouth.

BellSouth also wants to clearly state that by extending the time during which BellSouth will accept these "new add" orders, BellSouth does not abandon its legal position (which is addressed in detail in the Proposed Order and supporting Brief that BellSouth is filing in this docket today) that the clear words of the FCC mean exactly what they say. BellSouth will continue to pursue that position before state commissions, and to the extent that a commission has ruled adversely to BellSouth's position, in the courts. Additionally, and as explained more fully in Exhibit A, BellSouth has notified the CLECs that it intends, within the parameters of the law, to pursue the various CLECs who place orders for "new adds" after March 10, 2005, to the greatest extent of the law, in an effort to recover the revenues that BellSouth loses as a result of the placement of these unlawful orders.

Even after BellSouth stops accepting CLEC orders for "new adds" under the terms of the attached Notification, CLECs will continue to have several options involving switching, loops and transport available to serve their new customers. The CLECs who are complaining of an "emergency" can, and should, take advantage of these options like the more than 40 CLECs that have done so already – and who are properly focused on carrying out their business plans in the competitive market rather than raising specious claims of an "emergency" before the Commission. To this end, with regard to the combinations of switching and loops that constituted the UNE-Platform (UNE-P), BellSouth continues to offer CLECs these options:

- Short Term (3-6 month) Commercial Agreement to provide a bridge between the effective date of the Order and the negotiation of a longer term commercial agreement;¹ and
- Long Term Commercial Agreement (3 years, effective January 1, 2005, with transitional discounts available under those agreements executed by March 10, 2005).²

In addition, most CLECs, if not all, already have the option of ordering these former UNEs, and particularly the combination of loops and switching, as resale, pursuant to existing interconnection agreements.

With regard to the former high capacity loops and transport UNEs, BellSouth has two options for CLECs to consider. Specifically, CLECs may either elect to order resale of BellSouth's Private Line Services or alternatively, may request Special Access service.

Additionally, as BellSouth has previously notified the CLECs regarding the availability of a long term commercial agreement, through March 10, 2005, BellSouth will continue to offer its current DS0 Wholesale Local Voice Platform Services Commercial Agreement ("DS0 Agreement") with transitional discounts off of BellSouth's market rate for mass market platform services. Beginning March 11, 2005, BellSouth will offer a DS0 Agreement, but the existing transitional discounts will not be available. *See* Carrier Notification Attached as Exhibit C.

Finally, as explained above, the actions described in the Notification attached as Exhibit A are designed to allow the Commission to carefully consider the requests of the CLECs and the responses of BellSouth in a measured way. BellSouth recommends that the most appropriate way of doing this is for the Commission to hear oral argument Thursday, as scheduled in the Order the Commission entered in this docket on March 4, 2005. This would provide the Commission sufficient time to carefully consider the

¹ As is true with any other commercial agreement, the specifics of these Short-Term Commercial Agreements are subject to negotiation. As a general matter, however, BellSouth offers to provide loop/switching combinations (including what is currently known as UNE-P) at \$7 above existing TELRIC rates for the mass market and at \$10 above existing TELRIC rates for the enterprise (4 or more DS0 lines) market.

² As is true with any other commercial agreement, the specifics of these Long Term Commercial Agreements are subject to negotiation. As a general matter, however, BellSouth offers to provide transitional discounts for loop/switching combinations (including what is currently known as UNE-P) that, in the early years of the agreement, provide discounts off the "\$7 above existing TELRIC" prices for the mass market.

Mr. Charles Terreni
March 8, 2005
Page 4

parties' positions and their arguments supporting those positions prior to issuing an Order in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick W. Turner". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Patrick W. Turner

PWT/nml
Enclosure
cc: All Parties of Record

DM5 575862

EXHIBIT A

BellSouth Interconnection Services

675 West Peachtree Street
Atlanta, Georgia 30375

**Carrier Notification
SN91085061**

Date: March 7, 2005

To: Competitive Local Exchange Carriers (CLEC)

Subject: CLECs – (Interconnection/Contractual and Product/Service) – Triennial Review Remand Order (TRRO) - Unbundling Rules

On February 4, 2005, the Federal Communications Commission (FCC) released its permanent unbundling rules in the Triennial Review Remand Order (TRRO).

On February 11, 2005, BellSouth released Carrier Notification letter SN91085039, in which BellSouth set forth its understanding of the TRRO, particularly as it affected BellSouth's obligations to provide a number of former Unbundled Network Elements ("UNEs") after March 11, 2005. Specifically, BellSouth acknowledged that there would be a transition period for the embedded base of these former UNEs, but concluded that the FCC had intended to stop all "new adds" of these former UNEs effective March 11, 2005.

BellSouth posted this Carrier Notification letter on February 11, 2005, in order to provide the CLECs with as much lead time as possible in order to allow the CLECs to take whatever steps were necessary to adjust to the new situation created by the TRRO. Unfortunately, the step chosen by a number of CLECs in response to the clear language of the FCC dealing with "new adds" has been to ask various state commissions to order BellSouth to continue to accept such "new adds." Indeed, this approach has, to date, been successful in at least one jurisdiction, Georgia.

Furthermore, notwithstanding the fact that BellSouth's Carrier Notification SN91085039 was posted on February 11, 2005, various CLECs continue, as recently as March 3, 2005, to file requests with state commissions that have not addressed this question. These requests remain pending before state commissions and it is not clear, because of the delay in filing of these requests by the CLECs, that all state commissions will have a full and adequate opportunity to consider the important issue of whether the FCC actually meant what it said in its order when it indicated that there would be no "new adds." Indeed, at the present time there are at least two commissions in BellSouth's region that have scheduled consideration of the CLECs' requests at a date beyond March 11, 2005, the effective date of the TRRO, and the date that BellSouth had established to prevent unlawful "new adds."

Because of these events, BellSouth herewith revises the implementation date contained in Carrier Notification SN91085039 in the following respects. BellSouth will continue to receive, and will not reject, CLEC orders for "new adds" as they relate to the former UNEs as identified by the FCC for a short period of time. BellSouth will continue to accept CLEC orders for these "new adds" until the earlier of (1) an order from an appropriate body, either a commission or a court, allowing BellSouth to reject these orders; or (2) April 17, 2005. By doing this, BellSouth intends to allow those commissions who have not had the opportunity to fully and carefully consider the requests of the CLECs and the responses of BellSouth, to do so in a measured way, rather than via various "emergency" proceedings created by the dilatory tactics of a number of CLECs.

By extending the time during which BellSouth will accept these orders, BellSouth does not abandon its legal position that the clear words of the FCC mean exactly what they say. BellSouth will continue to pursue that position before the state commissions, and to the extent that a commission has ruled adversely to BellSouth's position, in the courts. Specifically, BellSouth will be asking the appropriate courts to stay any such adverse order we receive.

In addition, BellSouth hereby puts the CLECs on notice that it intends to pursue the various CLECs who place orders for "new adds" after March 10, 2005 to the greatest extent of the law, in an effort to recover the revenue that BellSouth loses as a result of the placement of these unlawful orders. Should any state commission be inclined to ignore the plain language of the FCC's TRRO, and to order BellSouth to continue accepting "new adds" until the issue is fully resolved, BellSouth will ask that commission to require CLECs to compensate BellSouth, in the event BellSouth ultimately prevails in its legal claim, for any former UNE added after March 10, 2005, in an amount equal to the difference in the rate paid by the CLEC and the appropriate rate BellSouth should have collected (either commercial or resale, depending on which service option the CLEC ultimately elects).

As noted in Carrier Notification SN91085039, CLECs will continue to have several options involving switching, loops and transport available to serve their new customers. To this end, with regard to the combinations of switching and loops that constituted UNE-Platform (UNE-P), BellSouth is offering CLECs these options:

- Short Term (3-6 month) Commercial Agreement to provide a bridge between the effective date of the Order and the negotiation of a longer term commercial agreement,
- Long Term Commercial Agreement (3 years, effective January 1, 2005, with transitional discounts available under those agreements executed by March 10, 2005)

In addition, most CLECs, if not all, already have the option of ordering these former UNEs, and particularly the combination of loops and switching, as resale, pursuant to existing interconnection agreements. With regard to the former high capacity loops and transport UNEs, BellSouth has two options for CLECs to consider. Specifically, CLECs may either elect to order resale of BellSouth's Private Line Services or alternatively, may request Special Access service.

Finally, as stated in Carrier Notification letter SN91085032 concerning the availability of a long term commercial agreement, through March 10, 2005, BellSouth will continue to offer its current DS0 Wholesale Local Voice Platform Services Commercial Agreement ("DS0 Agreement") with transitional discounts off of BellSouth's market rate for mass market platform services. Beginning March 11, 2005, BellSouth will offer a DS0 Agreement, but the existing transitional discounts will not be available.

To obtain more information about this notification, please contact your BellSouth contract negotiator.

Sincerely,

ORIGINAL SIGNED BY JERRY HENDRIX

Jerry Hendrix – Assistant Vice President
BellSouth Interconnection Services

EXHIBIT B

BellSouth Interconnection Services

675 West Peachtree Street
Atlanta, Georgia 30375

**Carrier Notification
SN91084043**

Date: March 23, 2004

To: All Competitive Local Exchange Carriers (CLEC)

Subject: CLECs (Product/Service) - Commercial Agreement for BellSouth DS0 Wholesale Local Voice Platform Service

On March 2, 2004, the United States Court of Appeals for the District of Columbia ("Court") issued its opinion (Order) in the appeal of the Federal Communication Commission's (FCC) Triennial Review Order (TRO). The Court vacated and/or remanded significant portions of the TRO. Specifically, the Court vacated the FCC's rules associated with, among other items, mass-market switching, thereby eliminating BellSouth's obligation to provide unbundled switching and, therefore, Unbundled Network Elements-Platform (UNE-P) at TELRIC rates. The Court's Order will become effective May 1, 2004, unless the Court grants a rehearing or issues a stay of the Order.

In light of the Court's Order, BellSouth is prepared to offer switching and DS0 loop/switching combinations (including what is currently known as UNE-P) at commercially reasonable and competitive rates. BellSouth will offer switching via a DS0 Wholesale Local Voice Platform Services commercial agreement. Consistent with the direction provided by FCC Chairman Michael Powell, BellSouth invites your company to enter into good faith negotiations of a market-based commercial agreement aimed at benefiting the end user, establishing stability in the industry and allowing real competition to continue throughout the BellSouth region. Entering into such an agreement will effect an efficient transition from switching under your existing Interconnection Agreement to switching offered on a commercial basis.

Highlights of this offer are as follows:

Availability:

This offer is available until May 1, 2004

Term:

Agreements executed before May 1, 2004, will be effective through December 31, 2007.

Rates:

The Agreement establishes a rate schedule for the DS0 Wholesale Local Voice Platform Services and standalone DS0 switch ports for the entire contract period.

Mass Market (less than 4 DS0 lines per end user):

- \$7 above existing state-ordered TELRIC UNE-P recurring rates*
- Discounts in 2004 result in a zero net increase above TELRIC*
- Transitional discounts in January 2005 through December 2006

* Rates ordered prior to June 24, 2003 in Georgia

Mass Market (cont.):

- Standalone DS0 switch ports at \$7 increase over existing state-ordered TELRIC recurring rates* with no transitional discounts

Enterprise Market (four or more DS0 lines or where a DS1 is serving an end user):

- Provides a \$10 increase over current DS0 state-ordered TELRIC UNE-P recurring rates* and applies to both DS0 Wholesale Local Voice Platform Services and standalone DS0 ports

Significant General Terms:

- Customer may continue to purchase standalone Loops or Resale Services under a BellSouth interconnection agreement and/or tariff.
- Guaranteed service metrics are offered through a service level commitment and are subject to payments by BellSouth to the customer for non-performance
- Prices, excluding discounts, for DS0 Wholesale Local Voice Platform Services will remain constant over the term of the Agreement.
- Damages will apply for non-compliance with the terms of the Agreement.

This offer is available only until May 1, 2004. Again, BellSouth invites you to enter into good faith negotiations of a commercial agreement as soon as possible in order to complete these negotiations by May 1.

To begin the negotiation process or obtain additional information, please contact Valerie Cottingham at 205-321-4970.

Sincerely,

Original signed by Jerry Hendrix

Jerry Hendrix – Assistant Vice President
BellSouth Interconnection Services

* Rates ordered prior to June 24, 2003 in Georgia

EXHIBIT C

BellSouth Interconnection Services

675 West Peachtree Street
Atlanta, Georgia 30375

**Carrier Notification
SN91085032**

Date: February 8, 2005

To: Competitive Local Exchange Carriers (CLEC)

Subject: CLECs – (Product/Service) – Commercial Agreement for BellSouth DS0 Wholesale
Local Voice Platform Services

On February 4, 2005, the Federal Communications Commission (FCC) released its Order on Remand ("Order"), which, among other things, relieved Incumbent Local Exchange Carriers ("ILEC") of their obligation to provide unbundled access to mass market switching and Unbundled Network Element-Platform ("UNE-P") services, on a nationwide basis, pursuant to Section 251 of the Act. The Order establishes a twelve-month transition period commencing March 11, 2005, during which CLECs must transition their embedded base of mass market switching and UNE-P lines to alternative arrangements. The Order further precludes CLECs from adding new UNE-P lines starting March 11, 2005.

As a result of these ordered changes, BellSouth would like to inform CLEC customers that through March 10, 2005, the day before the Order becomes effective, BellSouth will continue to offer its current DS0 Wholesale Local Voice Platform Services Commercial Agreement ("DS0 Agreement") with transitional discounts off of BellSouth's current market rate for mass market platform services. As of March 11, 2005, although BellSouth will continue to offer commercial agreements for DS0 switching and platform services, the pricing set forth in the current DS0 Agreement will no longer be available.

BellSouth encourages CLECs to contact their negotiator to find out more about its DS0 Agreement while the transitional discounts remain available.

Sincerely,

ORIGINAL SIGNED BY JERRY HENDRIX

Jerry Hendrix – Assistant Vice President
BellSouth Interconnection Services

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND) CERTIFICATE OF SERVICE

The undersigned, Nyla M. Laney, hereby certifies that she is employed by the Legal Department for BellSouth Telecommunications, Inc. ("BellSouth") and that she has caused a letter to Charles A. Terreni dated March 8, 2005 in Docket No. 2004-316-C to be served upon the following this March 8, 2005:

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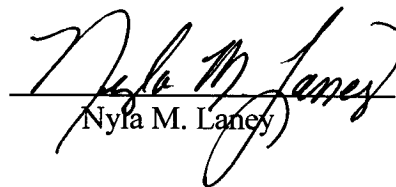
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Nyla M. Laney

PC Docs # 554784